



NATIONAL WILDLIFE FEDERATION®
Great Lakes Regional Center®

June 1, 2017

Robert Kaplan, Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Mail Code: R-19J
Chicago, Illinois 60604-3507

Subject: Freedom of Information Act Request

Dear Regional Administrator Kaplan,

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, the National Wildlife Federation ("NWF"), Ohio Environmental Council ("OEC"), and Alliance for the Great Lakes ("Alliance") request the records described below relating to (1) the May 2017 decision by the U.S. Environmental Protection Agency ("EPA"), Region 5, to approve the Ohio Environmental Protection Agency's ("OEPA's") 2016 Clean Water Act Section 303(d) list ("Ohio list"), and (2) the February 2017 decision by EPA, Region 5, to approve the Michigan Department of Environmental Quality's ("MDEQ's") 2016 Clean Water Act Section 303(d) list ("Michigan list").

Records Requested

A. Records relating to the Ohio list

1. Correspondence between EPA and OEPA about the inclusion or omission of the open waters of Lake Erie within Ohio's jurisdiction from OEPA's 2014 or 2016 Clean Water Act Section 303(d) lists.

2. Records created by EPA describing, detailing, or setting forth EPA's factual, technical, scientific, legal, or other basis for approving the omission of the open waters of Lake Erie within Ohio's jurisdiction from the Ohio list or any draft of the Ohio list.

3. Records received by EPA from OEPA describing, detailing, or setting forth OEPA's factual, technical, legal, or other basis for omitting the open waters of Lake Erie within Ohio's jurisdiction from the Ohio list or any draft of the Ohio list.

4. Records received by EPA from any public source other than OEPA, including, but not limited to, governments, scientific bodies, and academic institutions, commenting on or in support of comments on whether to include the open waters of Lake Erie within Ohio's jurisdiction in the Ohio list or any draft of the Ohio list.

5. Records received by EPA from any private source, including, but not limited to, individuals, groups, and businesses, commenting on or in support of comments on whether to include the open waters of Lake Erie within Ohio's jurisdiction in the Ohio list or any draft of the Ohio list.

6. Records describing or detailing the water quality monitoring data EPA had or has in its possession from 2010 to the present for the open waters of Lake Erie within Ohio's jurisdiction in the western or central basin of the lake, including, but not limited to, data on (a) the presence, dispersal, or concentration of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, *E. coli*, or toxins (including microcystin and saxitoxin), (b) blooms of algae or cyanobacteria, or (c) aquatic life, including fish, macroinvertebrates, zooplankton, and phytoplankton.

7. Records describing or detailing the condition of the open waters of Lake Erie within Ohio's jurisdiction in the western or central basin of the lake caused or contributed to by the introduction, presence, or dispersal of phosphorus (in any form), nitrogen (in any form), or other nutrients, in any year from 2010 to the present. Such conditions may include, but are not limited to, concentrations of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, blooms of algae or cyanobacteria, color, odor, and concentrations of microcystin or other toxins.

8. Records setting forth EPA's assessment of or comments on the conditions of the open waters of Lake Erie within Ohio's jurisdiction in the western or central basin of the lake caused or contributed to by (a) the presence, dispersal, or concentration of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, *E. coli*, or toxins (including microcystin and saxitoxin), (b) blooms of algae or cyanobacteria, or (c) aquatic life, including fish, macroinvertebrates, zooplankton, and phytoplankton, in any year from 2010 to the present.

9. Records describing or detailing the use or interference with the use of the open waters of Lake Erie within Ohio's jurisdiction in the western or central basin of the lake caused or contributed to by (a) the presence, dispersal, or concentration of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, *E. coli*, or toxins (including microcystin and saxitoxin), (b) blooms of algae or cyanobacteria, or (c) aquatic life, including fish, macroinvertebrates, zooplankton, and phytoplankton, in any year from 2010 to the present, for any purpose, including industrial, commercial, agricultural, consumption, or recreational, in any year from 2010 to the present.

B. Records relating to the Michigan list

1. Correspondence between EPA and MDEQ about the inclusion or omission of the open waters of Lake Erie within Michigan's jurisdiction from MDEQ's 2014 or 2016 Clean Water Act Section 303(d) lists.

2. Records created by EPA describing, detailing, or setting forth EPA's factual, technical, scientific, legal, or other basis for approving the inclusion of the open waters of Lake Erie within Michigan's jurisdiction in the Michigan list or any draft of the Michigan list.

3. Records received by EPA from MDEQ describing, detailing, or setting forth MDEQ's factual, technical, legal, or other basis for including the open waters of Lake Erie within Michigan's jurisdiction in the Michigan list or any draft of the Michigan list.

4. Records received by EPA from any public source other than MDEQ, including, but not limited to, governments, scientific bodies, and academic institutions, commenting on or in support of comments on whether to include the open waters of Lake Erie within Michigan's jurisdiction in the Michigan list or any draft of the Michigan list.

5. Records received by EPA from any private source, including, but not limited to, individuals, groups, and businesses, commenting on or in support of comments on whether to include the open waters of Lake Erie within Michigan's jurisdiction in the Michigan list or any draft of the Michigan list.

6. Records describing or detailing the water quality monitoring data EPA had or has in its possession from 2010 to the present for the open waters of Lake Erie within Michigan's jurisdiction, including, but not limited to, data on (a) the presence, dispersal, or concentration of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, *E. coli*, or toxins (including microcystin and saxitoxin), (b) blooms of algae or cyanobacteria, or (c) aquatic life, including fish, macroinvertebrates, zooplankton, and phytoplankton..

7. Records describing or detailing the condition of the open waters of Lake Erie within Michigan's jurisdiction lake caused or contributed to by the introduction, presence, or dispersal of phosphorus (in any form), nitrogen (in any form), or other nutrients, in any year from 2010 to the present. Such conditions may include, but are not limited to, concentrations of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, blooms of algae or cyanobacteria, color, odor, and concentrations of microcystin or other toxins.

8. Records setting forth EPA's assessment of or comments on the conditions of the open waters of Lake Erie within Michigan's jurisdiction caused or contributed to by (a) the presence, dispersal, or concentration of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, *E. coli*, or toxins (including microcystin and saxitoxin), (b) blooms of algae or cyanobacteria, or (c) aquatic life, including fish, macroinvertebrates, zooplankton, and phytoplankton, in any year from 2010 to the present, in any year from 2010 to the present.

9. Records describing or detailing the use or interference with the use of the open waters of Lake Erie within Michigan's jurisdiction caused or contributed to by (a) the presence, dispersal, or concentration of chlorophyll A, phosphorus (in any form), nitrogen (in any form), or other nutrients, *E. coli*, or toxins (including microcystin and saxitoxin), (b) blooms of algae or cyanobacteria, or (c) aquatic life, including fish, macroinvertebrates, zooplankton, and phytoplankton, in any year from 2010 to the present, for any purpose, including industrial, commercial, agricultural, consumption, or recreational, in any year from 2010 to the present.

C. Other records

1. Records describing, detailing, or setting forth EPA's basis for reconciling its decision to approve both OEPA's omission of the open waters of Lake Erie within Ohio's jurisdiction from the Ohio list and MDEQ's inclusion of the open waters of Lake Erie within Michigan's jurisdiction from the Michigan list.

2. Records describing or detailing options for methodologies or approaches for monitoring or tracking the development, movement, or dispersal of blooms of algae or cyanobacteria, which EPA has or had in its possession from 2010 to present.

Record Formats

For purposes of this request, "records" means information of any kind. "Records" include, but are not limited to, the following:

- | | |
|--|---|
| <input type="checkbox"/> writings (handwritten or typed, electronically or otherwise produced, reproduced or stored) | <input type="checkbox"/> drawings |
| <input type="checkbox"/> letters | <input type="checkbox"/> graphs |
| <input type="checkbox"/> inspection reports | <input type="checkbox"/> charts |
| <input type="checkbox"/> memoranda | <input type="checkbox"/> photographs |
| <input type="checkbox"/> correspondence | <input type="checkbox"/> videos |
| <input type="checkbox"/> notes | <input type="checkbox"/> meeting notes or minutes |
| <input type="checkbox"/> field notes | <input type="checkbox"/> electronic and magnetic recordings of meetings |
| <input type="checkbox"/> telephone conversations | <input type="checkbox"/> maps |
| <input type="checkbox"/> telephone logs | <input type="checkbox"/> reports |
| <input type="checkbox"/> telefaxes | <input type="checkbox"/> papers |
| <input type="checkbox"/> e-mails | <input type="checkbox"/> messages |
| <input type="checkbox"/> chats | <input type="checkbox"/> voice mails |
| <input type="checkbox"/> documents of any kind | <input type="checkbox"/> CDs |
| <input type="checkbox"/> databases | <input type="checkbox"/> any other compilations of data from which information can be obtained. |

NWF, OEC, and the Alliance request each such record, as more fully described above, in EPA's possession or otherwise under EPA's control, whether the record is at EPA's headquarters, Region 5, or any other EPA office.

Record Delivery

FOIA requires you to respond to this request is due within twenty working days of the date you receive it. 5 U.S.C. § 552(a)(6)(A)(i) & (ii)(II). Please mail or make other arrangements to supply copies of all requested records as soon as possible to:

Neil Kagan
801 Monroe Street
745 Legal Research Building
Ann Arbor, Michigan 48109

Fees

NWF, OEC, and the Alliance respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. §552(a)(4)(A)(iii). NWF, OEC, and the Alliance are all non-profit conservation organizations dedicated to promoting the public interest by protecting natural resources. They have no commercial interest in the requested information.

NWF, OEC, and the Alliance and their members have interests in the safety of Lake Erie's water for drinking, recreational, aesthetic, and other uses. Evidence establishes that existing effluent limitations are not stringent enough to implement the water quality standards applicable to the open waters of Lake Erie within Ohio's or Michigan's jurisdiction, making the water unsafe for drinking, recreational, aesthetic, and other uses by NWF, OEC, and the Alliance and their members.

The disclosure of the requested information will benefit the public interest by improving the public's understanding of EPA's actions with respect to its oversight of the water quality of the open waters of Lake Erie. The information is not otherwise attainable by the public, who will clearly be the primary beneficiary of the requested information. NWF, OEC, and the Alliance therefore request that EPA waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4).

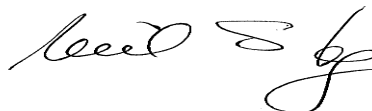
In the event that EPA denies a fee waiver for this request, NWF, OEC, and the Alliance will pay the required fees up to \$100.00. In the event that the expected cost of this request exceeds \$100.00, please call me at (734) 763-7087. Please note that the request for a fee waiver should not be construed as an extension of the 20-day limit for replying to this request.

Exempt Records

If you determine any of the requested records are exempt from required disclosure under FOIA, please disclose them anyway in order to serve the interest of educating citizens. Should you invoke a FOIA exemption, please include sufficient information for NWF, OEC, or the Alliance to appeal the denial, including basic factual material about each withheld item (e.g. originator, date, length, subject matter, and location), and reasons for the denial.

Thank you very much for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil S. Kagan", with a stylized flourish at the end.

Neil S. Kagan
Senior Counsel